IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R.No.2933 of 2006

Date of decision : 10.10.2006.

Mrs. Kalpana.

.....Petitioner.

Versus

Hemendra Pratap Singh.

.....Respondent.

CORAM : HON'BLE MR. JUSTICE VINOD K. SHARMA

Present : Mr. V.K.Jain, Sr. Advocate
with Ms. Divya Sharma,Advocate
for the petitioner.

Mr. R.S. Sihota,Advocate
for the respondent.

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The petitioner by way of present revision petition has challenged the order dated 13.3.2006 passed by the learned Addl. District Judge, Gurgaon declining permission to file additional written statement.

The petitioner has moved an application after conclusion of evidence by the petitioner stating therein that while preparing the arguments, it was noticed that the respondent herein has taken new ground in the replication filed by him to the written statement filed by the petitioner and there was no occasion of her to file reply to the same.

The said application was opposed by the respondent herein on the plea that the said application was not maintainable as her earlier application for amendment of written statement was dismissed by the Court

and the revision against the said order was also dismissed. It was contended by the learned counsel for the applicant that filing of application is misuse of the process of the Court and is an attempt to delay the proceedings. It was further claimed that the replication was filed on 7.4.2003 and in spite of expiry of three years no application was moved for filing additional written statement. It was the case of the respondent herein that no written statement could be filed after expiry of 90 days.

The learned Additional District Judge, Gurgaon came to the conclusion that the replication was filed on 7.4.2003 and no explanation was forthcoming as to why no application thereafter was immediately filed. The explanation that the facts pleaded in the replication came to the notice of the petitioner at the time of preparation of arguments was not believed. It was further held that the petitioner had no right to file additional written statement in view of the fact that application for amendment was declined and the revision against the said order was dismissed by this Court. It was further held that after expiry of 90 days no written statement could be filed in view of the amendment of Order 8 Rule 1 C.P.C. The Court further held that there was no provisions in the C.P.C. for filing additional written statement.

Mr. V.K.Jain, Sr. Counsel appearing for the petitioner placed reliance on the judgment of this Court reported in **1991 Civil Court Cases 408 (P&H) Hakam Singh Vs. Jagir Singh & Ors.** to contend that in case new pleas are taken in the replication, it is open to the party to file additional written statement. Para No. 4 of the said judgment reads as under :-

" 4. After giving my thoughtful consideration to the entire matter in the light of the submissions of the learned counsel for the parties, I, however, find that in making these submissions the learned counsel appears to be oblivious of the provisions of Order 8, rule 9, Civil Procedure Code, which provide that in a given case the Court may upon such terms as it think fit require a written statement or additional written statement from any of the parties. This rule invests the Court with the widest possible discretion and enables it to accept a written statement or rejoinder at any stage of the trial. It is no doubt true that no replication can be filed by the plaintiff to a written statement as a matter of right, but once it is so permitted to be filed it becomes part of the pleadings and in a case in which written statement raises a counter claim or a set-off is pleaded the plaintiff should normally be entitled to file a replication to the same. Similarly, in a case in which replication raises new pleas, which did not form part of the plaint, the defendant, to my mind, should be entitled to file an additional written statement or rejoinder to the same. It may be that in normal course the plaintiff cannot be allowed to raise a new plea in the replication yet if such a replication is allowed to become a part of the pleadings by the Court then, in all fairness, the defendant too should be provided

> an opportunity to controvert the new pleas taken in the replication. As already pointed out, to permit or not to permit the filing of such a rejoinder, being clearly within the jurisdiction and discretion of the trial Court, the impugned order does not call for interference in revision. It is neither a case of failure or exceeding the exercise of jurisdiction nor of exercising a discretion unjustly or illegally. The petition is thus dismissed with costs which I determine at Rs. 500/-."

The learned counsel for the petitioner further places reliance on the judgment of Hon'ble Supreme Court reported in **Shaikh Salim Haji Abdul Khayumsab Vs. Kumar and Others (2006) I Supreme Court Cases 46** to contend that prima facie to Order 8 Rule 1 C.P.C. is not mandatory but only directory and, therefore, in the given circumstances it is open to the Court to take additional written statement even after expiry of 90 days. The learned counsel for the petitioner further places reliance on the judgment of this Court reported in **Salig Ram and another Vs. Shiv Shankar and Others AIR 1971 Punjab & Haryana 437** to contend that as the replication is part of pleading and in case the petitioner is not allowed to controvert the same, the same would be deemed to have been accepted which will cause great prejudice to the case of the petitioner.

Mr. R.S.Sihota, learned counsel appearing for the respondent, however, contended that the authorities relied upon by the petitioner are not applicable as it is the discretion of the Court to grant or not to grant permission to file additional written statement. The learned counsel further

contended that in the present case the petitioner has been negligent and had taken no steps to move the application within time and, therefore, no fault can be found with the order passed by the learned lower Court below.

I have considered the arguments raised by the learned counsel for the parties and find that the learned Additional District Judge, Gurgaon has dismissed the application primarily on the ground that there was no provision for filing the additional written statement. This finding of the learned Court below cannot be sustained in view of the law laid down by this Court in the case of **Hakam Singh Vs. Jagir Singh & Ors.** (supra). Even otherwise, in case the petitioner is not permitted to file additional written statement, her rights are likely to be prejudiced in view of the judgment of this Court in the case of **Salig Ram and another Vs. Shiv Shankar and Others (supra).** The procedurral law is to be applied for advancement of justice and not to thwart the same. Accordingly, the present revision petition is allowed, impugned order is set aside and the application moved by the petitioner for filing of additional written statement to the replication filed by the respondent is allowed.

October 10,2006 **(VINOD K. SHARMA)**
'sp' **JUDGE**